



25TACD2022

Between

[REDACTED]

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter “the Commission”) as an appeal against the refusal of the Revenue Commissioners (hereinafter “the Respondent”) of a claim for the repayment of tax pursuant to section 865 of the Taxes Consolidation Act, 1997 (hereinafter the “TCA 1997”) made by the Appellant in respect of the year of assessment 2015. The amount of tax at issue is €45.84
2. This appeal has been determined, by agreement of the Parties, without an oral hearing pursuant to section 949U of the TCA 1997.

Background

3. The Appellant is an employee and in 2015 became a member of her employer’s share option scheme. The Appellant filed her income tax return for 2015 on 5th March 2021 and that income tax return gave rise to a refund of €45.84.
4. The refund was disallowed by the Respondent and this was notified to the Appellant on 25th March 2021. The basis of the Respondent’s disallowance of the Appellant’s claim

was a valid claim for repayment had not been made within the four-year limitation period set out in section 865(4) of the TCA 1997.

5. The Appellant filed a Notice of Appeal against the Respondent's decision with the Commission on 10th April 2021.

Legislation and Guidelines

6. The legislation relevant to this appeal is as follows:

Section 865 of the TCA 1997:

“(2) Subject to the provisions of this section, where a person has, in respect of a chargeable period, paid, whether directly or by deduction, an amount of tax which is not due from that person or which, but for an error or mistake in a return or statement made by the person for the purposes of an assessment to tax, would not have been due from the person, the person shall be entitled to repayment of the tax so paid.

...

(3) A repayment of tax shall not be due under subsection (2) unless a valid claim has been made to the Revenue Commissioners for that purpose.

(3A) (a) Subject to paragraph (b), subsection (3) shall not prevent the Revenue Commissioners from making, to a person other than a chargeable person (within the meaning of Part 41A), a repayment in respect of tax deducted, in accordance with Chapter 4 of Part 42 and the regulations made thereunder, from that person's emoluments for a year of assessment where, on the basis of the information available to them, they are satisfied that the tax so deducted, and in respect of which the person is entitled to a credit, exceeds the person's liability for that year.

(b) A repayment referred to in paragraph (a) shall not be made at a time at which a claim to the repayment would not be allowed under subsection (4).

(4) Subject to subsection (5), a claim for repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made—

(a) in the case of claims made on or before 31 December 2004, under any provision of the Acts other than subsection (2), in relation to any chargeable period ending on or before 31 December 2002, within 10 years,

(b) in the case of claims made on or after 1 January 2005 in relation to any chargeable period referred to in paragraph (a), within 4 years, and

(c) *in the case of claims made—*

*(i) under subsection (2) and not under any other provision of the Acts,
or*

*(ii) in relation to any chargeable period beginning on or after 1 January
2003,*

within 4 years, after the end of the chargeable period to which the claim relates.

...

(7) Where any person is aggrieved by a decision of the Revenue Commissioners on a claim to repayment by that person, in so far as that decision is made by reference to any provision of this section, the person may appeal the decision to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of the notice of that decision.”

Submissions

Appellant’s Submissions:

7. The Appellant submitted the following in support of her appeal:

“Given that I raised an income tax return in error during the period of 2015 and have never been self-employed. The shares to which I was paying tax was paid by the company of which I was employed, this was raised by mistake and I had not been given any guidance as what steps to take. I thought I had done the correct thing. Alas, not so.

I had not been notified prior to submitting my 2020 medical expenses (in January 2021) that I needed to complete a Form 11 in relation to any taxes due in 2015. Once I realised, I contacted your department and submitted this form immediately, and hence so my current appeal.

I look forward to hearing from you.”

Respondent’s Submissions:

8. The Respondent submits that the Appellant became a chargeable person in respect of Relevant Tax on Share Options under section 128 of the TCA 1997 and was registered for Income Tax, with effect from 1st January 2015.

9. The Respondent submits that the Appellant filed her Income Tax Return on 5th March 2021 which gave rise to a refund of €45.84. The Respondent submits that it disallowed the refund on the basis that a valid claim for repayment of tax had not been made within the four-year limitation period set out in section 865(4) of the TCA 1997.

Material Facts

10. The following material fact is at issue in this Appeal:

- i. The Appellant filed her Income Tax Return for 2015 with the Respondent on 5th March 2021.

11. The Commissioner has examined the material facts at issue.

The Appellant filed her Income Tax Return for 2015 with the Respondent on 5th March 2021:

12. This material fact is not at issue between the Parties. The Commissioner accepts that the Appellant filed her Income Tax Return for 2015 with the Respondent on 5th March 2021. Therefore this material fact is accepted.

13. Therefore the following are the material facts which the Commissioner has accepted:

- i. The Appellant filed her Income Tax Return for 2015 with the Respondent on 5th March 2021.

Analysis

14. Section 865(2) of the TCA 1997 provides that a person is entitled to a repayment of tax paid where an amount of tax paid is not due from that person. Section 865(3) of the TCA 1997 provides that a repayment of tax is not due unless a valid claim has been made to the Respondent.

15. Section 865(1)(b)(i) of the TCA 1997 provides that where a person furnishes a return which is required to be delivered by the person for a chargeable period, such a return shall be treated as a valid claim in relation to a repayment of tax where all the information which the Respondent may reasonably require to enable them determine if and to what extent a repayment of tax is due is contained in the return furnished by the person.

16. Section 865(1)(b)(ii) of the TCA 1997 provides that where all the information which the Respondent may reasonably require to enable them to determine if and to what extent a repayment of tax is due is not contained in the return furnished by the person, a claim for repayment of tax shall be treated as a valid claim when that information has been furnished by the person.

17. In relation to a limitation period for a repayment of tax section 865(4) of the TCA 1997 provides that ‘...*a claim for repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made- within 4 years, after the end of the chargeable period to which the claim relates.*’ [emphasis added].
18. The Appellant sought a repayment of tax on the basis that an amount of tax paid for the 2015 tax year was not due. The entitlement to a repayment of tax arises under section 865(2) of the TCA 1997. Section 865(3) of the TCA 1997 means the repayment of tax sought by the Appellants under section 865(2) of the TCA 1997 is not due unless a valid claim has been made to the Respondent. Therefore, for the repayment of tax in the amount of €45.84 to be due, the Respondent must have received a valid claim from the Appellant.
19. The Respondent had all the information which they required to enable them determine if and to what extent a repayment of tax was due to the Appellant, following the delivery of the relevant claim to repayment, only when the 2015 return was received in March 2021.
20. In deciding if the Appellant is entitled to repayment of tax, and having established that there is a valid claim, the provisions of section 865(4) of the TCA 1997 must be applied. As the claim for repayment of tax by the Appellant was made outside the four-year period specified in section 865(4) of the TCA 1997, the claim for repayment in the amount of €45.84 for the year 2015 was disallowed.
21. The use of the word ‘shall’ as set out in section 865(4) of the TCA 1997, indicates an absence of discretion in the application of this provision. The wording of the provision does not provide for extenuating circumstances in which the four-year rule might be mitigated.
22. The Commissioner has no authority or discretion to direct that repayment be made or credits allocated to the Appellant where the claim for repayment falls outside the four year period specified in section 865(4) of the TCA 1997.
23. Previous determinations of the Tax Appeals Commission have addressed the matter of repayment in the context of the four year statutory limitation period. These determinations, may be found on the Commission website.¹
24. The burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof is, as in all taxation appeals, on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

“This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable.”

¹ www.taxappeals.ie

25. The Appellant has not discharged the burden of proof to satisfy the Commissioner that the refund is payable by the Respondent pursuant to section 865 of the TCA 1997.

Determination

26. For the reasons set out above, the Commissioner determines that the Appellant has failed in her appeal and has not succeeded in showing that the relevant refund was payable.

27. It is understandable that the Appellant might be disappointed with the outcome of her appeal. The Appellant has found herself in an unfortunate situation but the Commissioner has no discretion in these cases due to the application of the four year rule, set out above. The Appellant was correct to check to see whether her legal rights were correctly applied.

28. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular, section 949U thereof. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.



Clare O'Driscoll
Appeal Commissioner
9th February 2022